

SERVED: February 2, 1999

NTSB Order No. EA-4740

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 2nd day of February, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15215
v.)	
)	
OLAF PETER JUDA,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because the appeal was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a) of the Board's Rules of Practice (49 CFR Part 821).¹ We will grant the motion, to which respondent filed a reply in opposition.

¹Section 821.48(a) provides as follows:

§ 821.48(a) Briefs and oral argument.

(a) *Appeal briefs.* Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

The record establishes that respondent filed a timely notice of appeal from the law judge's August 26, 1998 written decision, but he did not file an appeal brief within 30 days after that date; that is, by September 25, 1998.²

In response to the Administrator's motion to dismiss, respondent argues that his appeal brief, mailed on September 28, was timely because it was filed within 30 days after he received the law judge's decision. Respondent's position is unavailing. As was clearly explained in appeal advice accompanying the law judge's decision, under our rules, the 30 days for filing an appeal brief run from the service date of the law judge's decision, not from the date the party receives the decision.³

Without good cause to excuse a failure to file an appeal brief on time, a party's appeal must be dismissed. See Administrator v. Hooper, 6 NTSB 559 (1988). Respondent's mistake as to the filing deadline for his appeal brief does not constitute good cause. See, e.g., Administrator v. Near, 5 NTSB 994 (1986) (unfounded error in determining due date does not excuse procedural default).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

Daniel D. Campbell
General Counsel

²In his decision, the law judge, among other rulings, granted summary judgment on the Administrator's allegation that respondent's private pilot certificate (No. 562628055) should be revoked pursuant to section 61.15 of the Federal Aviation Regulations, 14 CFR Part 61, because of his Federal court drug convictions.

³Respondent had also been sent a copy of the Board's rules of practice when his appeal from the Administrator's order was filed.